UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,343	06/25/2003	Joanne Mary Holmes	F3311(C)	2624

201 7590 01/17/2006

UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER	
CHAWLA, JYOTI	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/603,343	HOLMES ET AL.	
	Examiner	Art Unit	
	Jyoti Chawla	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-8 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 10/3/03 & 2/25/04.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by **Koene et al (US Patent Number 4534983)**.

3. Claim 1 recites a method of preparing a tea product comprising of leaf tea and tea solids (derived from tea powders), method is characterized in that the tea mixture is simultaneously wetted and dried. In regards to claim 1, Koene et al teach a process for flavoring tea in which the dry tea leaves (vegetable material) and microencapsulated flavor (tea solids) are mixed together and later are sprayed with water based low viscosity adhesive solution and thoroughly mixed (column 2, lines 15-19 and column 3, lines 53-57), i.e., the dry mix ingredients are wetted together. Koene et al also teach to continue mixing until the mixture is almost or completely dry, i.e., the mix tea ingredients are dried together Column 2, lines 25-30). Since Koene et al teach to make the dry tea mix and then wet it and dry it together; therefore Koene et al anticipate applicant's recitation of claim 1.

4. Claim 3 recites that the fabricated leaf tea product is dried to about 3-8% moisture. Koene et al teach that their tea product should be dried until the final moisture content is 12% or less by weight for tea, which is in the average range for moisture level of teas (column 2, lines 40-50). Since the recited moisture content (about 3-8%) fall in the range taught by Koene et al (less than 12%), therefore, applicants recitation of Claim 3 is anticipated by Koene et al.

5. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by **Carns et al (EP 0910956A1)**.

6. In regards to claim 1, as recited contains a mixture of tea leave and tea solids, Carns et al also teach a tea bag containing a tea mixture of tea leaves and tea solids (abstract). The recitation of claim 1 uses the term "characterised" to describe the simultaneous wetting and drying of the fabricated tea mix. In regards to claim 1, "characterised" is being considered to mean that tea leaves and tea solids are simultaneously wet at some point and are dried together, as taught by Carns et al where tea concentrate is sprayed on to tea leaves and dried either simultaneously or separately (page 3, lines 42-44). Since the tea leaves and the tea solids are wet simultaneously when the concentrate is sprayed on tea leaves, therefore, Carns et al anticipate applicant's recitation of claim 1.

7. Claim 2 recites the range of amount of tea powder in the fabricated tea product (about 10% - about 75%). Carns et al teach a range of about 5% to about 70%(Page 3, lines 46-47). Since the recited range terminology is approximate ("about") in the

application as well as the reference therefore, applicant's recitation of claim 2 is anticipated by Carns et al.

8. Claim 3 recites the moisture content of the fabricated tea product to about 3-8%. Carnes et al teach the final moisture content of the mixture of tea leaves and tea solids in the range of about 3-7% (Page 5, lines 30-31). Since the range terminology is approximate ("about"), in the application as well as the reference, and the range taught by Carns falls within applicant's recited range, therefore applicant's recitation of claim 3 is anticipated by Carns et al.

9. Claim 4 recites the use of fluidized bed to simultaneously wet and dry the tea product. Carns et al also teach the use of fluidized bed in the coating step of their process (Page 3, lines 43-44). Since both the applicant and the reference utilize fluidized bed equipment therefore Carns et al anticipate applicant's recitation of claim 4.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koene et al (US Patent Number4534983) as applied to claim1 and 3 above, and further in view of Hampton et al (GB 2239305 A) and further in view of Menzi et al (US Patent Number 6056949).

13. Claim 5 recites the use of hot water to wet the tea product and claim 6 recites the temperature range of the hot water (30-60 C). In regards to claims 5 and 6, Koene makes the tea product by mixing dry ingredients and then wetting them while continuing to mix until the product is dry using air or inert gas that may be warmed if desired. Koene is silent as to the water temperature (water based adhesive) and the temperature of the circulating air in the drying equipment and is also silent as to the drying equipment used.

14. Hampton et al teach the use of fluidized bed for drying tea because the conventional tea driers do not provide simultaneous regulation of optimum temperature and moisture to obtain a dried tea product with consistent good leaf quality (page 3).

15. Menzi et al teach a process of making granulated flavorings for tea (example 6) and use the fluidized bed apparatus (column 1, line 61). The air temperature taught by Menzi et al ranges from about 30-80 C (column 2, lines 49-51).

16. It would have been obvious to one with ordinary skill in the art to modify Koene et al and use the fluidized bed as taught by Hampton et al, to reduce energy and product waste and obtain a more consistent final tea product and to use water that has been

heated in the range of 30-80 C to make the adhesive liquid and to spray on the dry tea mix in order to maintain the temperature of the fluidized bed between 30-80 C as taught by Menzi et al, and make the process more energy efficient. If cold water were to be used to wet the tea product then it would use more energy to bring the temperature of the wet-tea product at par with the set temperature of the fluidized bed. Therefore, to modify Koene et al, based on the teachings from Hampton et al and Menzi et al, and use the fluidized bed for drying and use hot water to wet the dry tea mix would have been more energy efficient and is art recognized and the applicant's intent would have been obvious.

17. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koene et al (US Patent Number4534983) as applied to claim1 and 3 above, and further in view of Hampton et al (GB 2239305 A) and further in view of Menzi et al (US Patent Number 6056949).

18. Claim 7 recites the temperature range of the fluidized bed in the range of about 35-60 C and claim 8 further narrows it to 35 C. As discussed above regarding claims 5 and 6, Menzi et al teach a process of making granulated flavorings for tea (example 6) and use the fluidized bed apparatus (column 1, line 61). The air temperature taught by Menzi et al ranges from about 30-80 C (column 2, lines 49-51), which includes applicant's recited range of 35-50 C and also applicant's preferred temperature of about 35 C. Since Koene et al teaches heated air drying of the tea product, therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Koene to include fluidized bed for drying the tea product and include

the air temperature range taught by Menzi et al because it is the most suitable range of temperature for drying tea and other flavorings. One skilled in the art would have been motivated to generate the claimed invention with a reasonable expectation of success.

19. The prior art made of record as part of USPTO form 892 contains references that have not been relied upon in this office action but are considered pertinent to applicant's disclosure.

Remarks/ Conclusion

1. No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jyoti Chawla 1/6/06.
Examiner
Art Unit 1761

***

SPE 1761